

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CLARENCE N TEJAN**  
Claimant

**PACKERS SANITATION SERVICES INC**  
Employer

**APPEAL 16A-UI-06753-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/17/16  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 10, 2016 (reference 02) unemployment insurance decision that denied benefits based upon his voluntary quit by failing to report to work for three days in a row and not notifying the employer of the reason. The parties were properly notified of the hearing. A telephone hearing was held on July 5, 2016. The claimant, Clarence Tejan, participated and testified. The employer, Packers Sanitation Services, Inc., participated through site manager Cesar Garcia.

**ISSUE:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a laborer from April 24, 2014 until this employment ended on March 8, 2016, when he was deemed to have voluntarily quit.

On February 3, 2016, claimant was absent from his scheduled shift. Claimant had worked his shift the previous day on February 2. Garcia testified claimant did not call in to report his absence and was gone again on February 4 and 5. According to Garcia he tried calling claimant on February 3 and 4 to see where he was but got no answer. The employer has a policy in place that states employees who are a no-call/no-show for three consecutive days are deemed to have voluntarily quit and are separated from employment. Each employee is given a copy of this policy as part of the employee handbook upon being hired. Garcia also testified he reminded claimant of this policy during prior coaching regarding no-call/no-shows. Under the employer's policy, Garcia should have submitted claimant's separation paperwork on Monday February, 8, 2016. However, Garcia testified he held off on submitting the paperwork because claimant was generally a good employee and he wanted to give him some extra time to contact the employer.

According to Garcia claimant called him approximately two weeks after his last day worked and reported he had been sick. Garcia reported he told claimant that if he could meet with him and provide some sort of documentation they would consider keeping him as an employee. Garcia testified he set up a meeting time with claimant, but claimant never showed up for the meeting. Approximately one week later, claimant called Garcia again and the two set another meeting for March 7, 2016. Claimant again did not show up for the meeting, so Garcia sent his separation paperwork forward.

Claimant testified he called and spoke with Garcia on February 3, 2016, telling him he would not be in to work that day because he was sick and going to the hospital. According to claimant Garcia said that was fine and to contact him when he was out of the hospital. Claimant initially testified he was in the hospital for approximately one week and immediately called Garcia upon being discharged. Later in his testimony claimant clarified that he was discharged from the hospital on Friday, February 5 and called Garcia on Monday, February 8, 2016 to let him know he had been discharged. According to claimant Garcia told him he needed to speak with his supervisor and to call back in a week. Claimant testified he spoke to Garcia again on either March 7 or 8, and was told at that time he had been terminated. Claimant later testified it must have been February 15 that this conversation occurred, as he called Garcia back within a week and everything happened in February. Claimant denied receiving prior discipline, that Garcia ever set up times to meet with him, or that he was told him to bring in a doctor's note.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

The decision in this case rests, at least in part, on the credibility of the parties. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Claimant testified that he called and let Garcia know he was sick. Garcia denied ever receiving such a call. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Claimant failed to call in to work for three consecutive days. After speaking to Garcia, claimant was given to additional chances to come in to work with documentation regarding his absence. Claimant failed to show up for either meeting regarding his absences. An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer.

**DECISION:**

The June 10, 2016 (reference 02) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he is deemed eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

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